

IN THE WATER COURT OF THE STATE OF MONTANA
UPPER MISSOURI DIVISION
WILLOW CREEK BASIN (41N)
PRELIMINARY DECREE

CLAIMANT: Three U Cattle Co.

CASE: 41N-0278-R-2022

41N 153729-00

41N 153730-00

NOTICE OF FILING OF MASTER'S REPORT

This Master's Report was filed with the Montana Water Court on the above stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusions of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must serve a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

MASTER'S REPORT

All water right claims that appeared in the Preliminary Decree for Willow Creek (Basin 41N) were subject to "issue remarks" resulting from pre-decree examination by the DNRC, objections, and counterobjections.

Claims 41N 153729-00 and 41N 153730-00 were consolidated into Case 41N-0278-R-2022 to resolve the issue remarks.

FINDINGS OF FACT

1. Claim 41N 153729-00 received the following substantive issue remarks:

THE MEANS OF DIVERSION APPEARS TO BE INCORRECT. THE MEANS OF DIVERSION APPEARS TO BE A HEADGATE.

THE CLAIMED VOLUME CANNOT BE CONFIRMED DUE TO LACK OF DATA.

- Claim 41N 153730-00 received the following substantive issue remarks:

SOURCE NAME COULD NOT BE CORRECTED AS IT WAS CREATED BY WATER COURT. IT APPEARS FROM THE TOPOGRAPHICAL MAP HAYSTACK BUTTE, SOURCE NAME FOR POINT OF DIVERSION NUMBER 1 SHOULD BE UNNAMED TRIBUTARY OF EAGLE CREEK AND POINT OF DIVERSION NUMBER 2 SHOULD BE EAGLE CREEK.

2. On September 22, 2022, the Court consolidated the claims ordered the Claimant to work with the DNRC to resolve the issue remarks.

3. On December 20, 2022, DNRC Water Resources Specialist Dixie Brough filed a *Memorandum* in this matter. The *Memo* states that the DNRC was contacted by Claimant Robert Thompson, President of Three U Cattle Co. on October 19, 2022. Ms. Brough's *Memo* states that at the time Mr. Thompson request a withdrawal of the Statement of Claim for claim 41N 153729-00 and that it was determined that the DNRC would prepare a *Motion to Amend* water right claim 41N 153730-00 for claimant review and signature. Included with the *Memorandum* from Ms. Brough was a *Verified Motion to Amend* water right claim 41N 153730-00 requests to amend the following elements:

41N 153730-00:

Point of diversion No. 1: We wish to amend point of diversion No. 1 from SENESW to NESESW and the source of water from Eagle Creek to UT Eagle Creek, per Haystack Butte Topographic map.

Geocode: 48-4857-26-2-02-01-0000

Point of Diversion No. 2: This point of diversion and its Eagle Creek source of water is correct, per Haystack Butte Topographic map.

4. Each claim also received a notice-type issue remark from the DNRC during its claims reexamination. No Objections were filed.

PRINCIPLES OF LAW

1. A properly filed Statement of Claim for an existing water right is prima facie proof of its content. Section 85-2-227, MCA; Rule 10, W.R.Adj.R.

2. Prima facie proof may be contradicted and overcome by a preponderance of the evidence. Rule 19, W.R.Adj.R.

3. A preponderance of the evidence is evidence that shows a fact is “more probable than not.” *Hohenlohe v. State*, 2010 MT 203, ¶ 33, 357 Mont. 438, 240 P.3d 628.

4. If prima facie status is overcome, the burden shifts back to the claimant to demonstrate historical use. *79 Ranch v. Pitsch*, 204 Mont. 426, 432-33, 666 P.2d 215, 218 (1983).

5. Section 85-2-248(2), MCA, requires that the Water Court resolve all issue remarks that are not resolved through the objection process. *See also* Rule 7, W.R.Adj.R.

6. The Water Court may use information submitted by the DNRC, the Statement of Claim, and any other data obtained by the Court to evaluate a water right. Sections 85-2-227, -231(2), MCA.

7. When resolving issue remarks, the Water Court must weigh the information resulting in the issue remark and the issue remark against the claimed water right. Section 85-2-247(2), MCA. The factual evidence on which an issue remark is based must meet the preponderance of evidence standard before the prima facie status of a claim is overcome. 43Q 200996-00 et al., Order Establishing Volume and Order Closing Case, at 18, June 8, 2015.

8. If a claimant fails to comply with an order issued by the Water Court, the Court may issue orders of sanction that are just. Rule 22, W.R.Adj.R.

CONCLUSIONS OF LAW

1. The information in the record is sufficient to resolve the above-listed issue remarks appearing on the claim. Based on the information contained Ms. Brough's *Memo*, the attached *Motion to Amend* for claim 41N 153730-00, and the *Withdrawal of Statement of Claim* for claim 41N 153729-00 the point of diversion should be modified as described in Finding of Fact No. 3. Claim 41N 153729-00 should be dismissed per the Claimants request to withdraw the Statement of Claim. The issue remark should be removed from claim 41N 153730-00.

2. The notice-type issue remark appearing on the claim 41N 153730-00 served its notice purpose and should be removed from the claim.

RECOMMENDATIONS

Based on the foregoing Findings of Fact and Conclusions of Law, this Master recommends that the Court adopt the changes as outlined above.

Post decree abstracts of the water right claims reflecting the recommended changes are attached to this Report.

ELECTRONICALLY SIGNED AND DATED BELOW.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail:

Three U Cattle Co.
PO Box 97
Whitlash, MT 59545-0097

POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
WILLOW CREEK
BASIN 41N

Water Right Number: 41N 153729-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: DISMISSED

Owners: THREE U CATTLE CO
PO BOX 97
WHITLASH, MT 59545 0097

Priority Date:

Type of Historical Right:

Purpose (use): IRRIGATION

Flow Rate:

Volume:

Source Name: HAWS CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

Period of Use:

Place of Use:

Remarks:

THIS CLAIM WAS DISMISSED BY ORDER OF THE WATER COURT.

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
WILLOW CREEK
BASIN 41N**

Water Right Number: 41N 153730-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: THREE U CATTLE CO
PO BOX 97
WHITLASH, MT 59545 0097

Priority Date: OCTOBER 18, 1908

Type of Historical Right: FILED

Purpose (use): IRRIGATION

Irrigation Type: FLOOD

***Flow Rate:** 269.00 GPM

***Volume:** 73.60 AC-FT

THE VOLUME QUANTIFICATION ON THIS CLAIM IS THE RESULT OF A STIPULATION FILED BY THE PARTIES WITH THE WATER COURT ON 05/16/1985. THE COURT HAS MADE NO DETERMINATION AS TO THE NEED FOR A VOLUME QUANTIFICATION ON THIS CLAIM AS PROVIDED FOR IN 85-2-234 (6) (B) (III) M.C.A.

Climatic Area: 4 - MODERATELY LOW

***Maximum Acres:** 16.00

***Source Name:** EAGLE CREEK

Source Type: SURFACE WATER

***Source Name:** UNNAMED TRIBUTARY OF EAGLE CREEK

Source Type: SURFACE WATER

***Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NESESW	26	36N	4E	LIBERTY

***Source Name:** UNNAMED TRIBUTARY OF EAGLE CREEK

Period of Diversion: APRIL 1 TO NOVEMBER 1

Diversion Means: DIVERSION DAM

2		NESESW	26	36N	4E	LIBERTY
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***Source Name:** EAGLE CREEK

Period of Diversion: APRIL 1 TO NOVEMBER 1

Diversion Means: DIVERSION DAM

Period of Use: APRIL 1 TO NOVEMBER 1

***Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	16.00		S2SW	26	36N	4E	LIBERTY

Total: 16.00